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THE ARMY

LAWYER



DA PAMPHLET 27-50-46 HEADQUARTERS, DEPARTMENT OF THE ARMY, WASHINGTON, D.C.

Field Defense Services

The following letter is from The Judge Advocate General.

DEPARTMENT OF THE ARMY
OFFICE OF
THE ADVOCATE GENERAL
WASHINGTON, D.C. 20310

7 September 1976

DAJA-ZA

SUBJECT: Field Defense Services

TO: ALL STAFF JUDGE ADVOCATES

1. One of our most important responsibilities is to insure that each soldier accused of an offense under the Code is provided the best possible defense services. The heart of defense services lies in the quality and effectiveness of trial representation. Although we can take pride in our defense services, there remains room for improvement. This is particularly true with regard to providing field defense counsel with assistance and a program of continued professional development. Accordingly, the purpose of this letter is to announce the creation of the Field Defense Services Office, designed to fulfill this need, and to explain how it will function in relationship to our total defense system.

2. My chief advisor in matters regarding the defense function is The Assistant Judge Advocate General for Civil Law (AJAG/CL). He executes this responsibility through the defense organization, which includes the new Field Defense Service Office—Defense Appellate Division (FDS), Major Command (MA-COM) senior defense counsel and installation senior defense counsel. For this reason, although subordinate counsel are authorized direct communication with AJAG/CL, they

are encouraged first to seek solutions to all matters through the defense organization. Further amplification of defense counsel relationships and training may be found in BG Coggins' letter of 25 April 1975 to all defense counsel, and my letter of 23 July 1975 to staff judge advocates, both to be reprinted shortly in *The Army Lawyer*.

3. Proper utilization of this organization requires complete understanding of its structure and capabilities. The cornerstone of this chain is the general court-martial jurisdiction senior defense counsel. He is the major point of coordination between trial defense counsel and the staff judge advocate. His major responsibilities are:

a. Receiving and resolving what he deems to be valid complaints from subordinate defense counsel or referring those complaints to appropriate military authority. Resolving any differences between office defense counsel and the staff judge advocate either by direct communication with him or up the defense chain.

b. Receiving and taking appropriate action on complaints from defense related personnel against defense counsel, e.g., clients, parents, relatives, and civilian attorneys.

c. Serving as a consultant, on request, to all subordinate counsel on trial tactics and potential problems, and monitoring individual counsel skill levels to insure that they possess that skill requisite for case assignments.

d. Monitoring and resolving deficiencies in the separateness and adequacy of subordinate counsel offices, and administrative and logistical support.

e. Administrative supervision of all instal-

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lation defense counsel and their activities, including case assignments; determination of the availability of individual requested counsel; rating subordinate counsel, and the presentation of defense policy problems.

This list is not intended as all inclusive, and I emphasize that effective and imaginative implementation of this role will result in better service to the client and the Corps.

4. The MACOM senior defense counsel is the point of contact for matters relating primarily to command aspects, such as complaints against SJA's and the adequacy of support, when such matters cannot be solved locally and must be referred to a higher command level.

5. In order to make the defense chain more responsive to the needs of defense counsel, I have directed the creation of a separate field defense services office, (FDS), within the Defense Appellate Division, to operate under the auspices of AJAG/CL. That office will be operational on 1 October 1976 and will provide the following services:

a. Ethics guidance and trial tactics advice. It will provide telephonic or written guidance and/or research assistance to specific field inquiries in time for use at trial.

b. Preparation of *The Advocate* and other periodic communications, to insure distribution of new defense developments.

c. In coordination with TJAGSA, present instruction on defense matters at the basic course and at a new semiannual continuing legal education course for defense counsel. Additionally, they will coordinate periodic regional defense counsel seminars, which will stress the practical application of changes in HQDA policy, military and other criminal judicial developments, the solutions to recurring field problems, trial tactics, and the defense role in pre-trial and post-trial levels.

d. Periodic visits with field defense counsel to insure two-way communication and personal professional contact within the defense organization, and to evaluate our system of defense services.

6. I stress that this new office is to aid the field and to react to problems as they arise. It will not unilaterally initiate contact with the field to create appellate issues, nor otherwise involve itself in your jurisdictions. An *Army Lawyer* article will present the defense structure in more detail in the near future. I commend it to your reading and study. The first two Defense Advocacy Courses are scheduled for 26-29 October 1976 and 18-21 April 1977. You should insure that your defense counsel and prospective defense counsel take advantage of these courses.

7. In overseas commands, it would be difficult for FDS to perform those functions requiring

personal contact. Each major command overseas should task its senior defense counsel to assume these functions in coordination with FDS.

8. We have outstanding defense services today. I am confident that with your support and enthusiastic implementation of the complete defense organization, our service will be significantly better in the future. As always, your comments and suggestions are welcome.

WILTON B. PERSONS, JR.
Major General, USA
The Judge Advocate General

The materials mentioned in The Judge Advocate General's letter are printed below.

FIELD DEFENSE SERVICES OFFICE

The Judge Advocate General has always emphasized the importance of improving the representation of accused before courts-martial. With this in mind, BG Coggins in his letter to "all defense counsel", dated 25 April 1975, "highlighted" the structure and the role of the informal defense counsel chain existing within the Corps (Reprinted Appendix A). Later, to stress another area for improvement in the provision of defense services, MG Persons in his letter of 23 July 1975 delineated the necessary training and evaluation responsibilities of staff judge advocates toward their trial defense counsel (Reprinted Appendix B). Further study revealed that the informal defense organization as previously existing was not entirely responsive to the needs of defense counsel. As a result, The Judge Advocate General directed that a separate field defense services office be established within the Defense Appellate Division (DAD). This new organization will be operational by 1 October 1976. In order to insure maximum utilization of this vital new link in the defense chain, it is essential that the Corps be fully aware of the services this office provides, how it is organized to provide them, and what quality of response can be expected.

The mission of Field Defense Services Office

(FDS) is to provide a source of defense oriented assistance beyond that inherent in the roles of the installation senior defense counsel and the MACOM senior defense counsel, as those roles are currently defined. Pursuant to TJAG's direction the five major components of the FDS mission are:

(1) to monitor and train defense counsel; (2) to monitor defense representation for inadequate or improper practice; (3) to insure timely distribution of information and promote the interchange of ideas between defense counsel; (4) to respond to inquiries, complaints, and requests for assistance from the field with emphasis on ethics and trial tactics; and (5) to plan future improvements in defense services. The FDS will not become involved in trials or otherwise try to develop appellate issues. Further, FDS will not interfere with the staff judge advocates in the operation of their jurisdictions. The FDS goal will be to improve the quality of defense services.

The mission will be accomplished by field visits, instructional training, written guidance, and direct consultation with defense counsel in the field.

Periodic visits will be made to field defense offices to evaluate defense services and to

insure proper utilization of the defense organization. These visits will also insure personal professional contact between FDS and field defense counsel. This communication should help identify, avoid, or resolve potential problem areas.

The FDS will monitor training of defense counsel. The FDS will assist The Judge Advocate General's School (TJAGSA) in the preparation and delivery, as an integral part of the JAGC Officer Basic Course, of a block of instruction designed to prepare new officers to be defense counsel.

As a coordinated project with TJAGSA, FDS will also assist in presenting a semi-annual continuing legal education course for defense counsel. It will be designed for trial advocates with six months to one year of trial experience. It will polish advocacy skills and motivate utilization of all defense services. The first courses are scheduled for 26-29 October 1976 and 18-21 April 1977. Defense counsel are urged to take advantage of these courses.

In addition, periodic regional defense counsel seminars will be conducted by FDS. Defense counsel from one or two contiguous general court-martial jurisdictions will gather at a central location for a few days. The seminars will emphasize the practical aspects of trial practice; the substantive content of these seminars, as well as the other instructions discussed above, would include changes in HQDA policy, military and other criminal judicial developments, recurring problems, trial tactics, and location and procurement of documentary evidence and witnesses. The FDS will identify and arrange for the utilization of reserve JAGC officers, many of whom possess special trial expertise as civilian judges and trial attorneys, to assist in these presentations. For example, shortly before a scheduled seminar, FDS could arrange to have one or more JAGC reserve officers or active duty military judges observe several courts-martial. Then, during the seminars, they could critique the defense efforts. These seminars will provide valuable input for evaluation of defense services and will be the regular defense ori-

ented continuing legal education for field counsel. They also will help alleviate the impact of the shortage of experienced defense attorneys. All jurisdictions will share the benefit of experienced counsel.

The FDS will produce and distribute defense oriented publications, including *The Advocate*. Other messages or letters will be distributed as required. These publications will identify recurring errors, amplify defense implications in published opinions, respond to inquiries from the field, and provide suggestions on defense techniques at the pretrial and post-trial levels. A Trial Defense Attorney's Handbook will be developed. In addition to improving defense services, these publications and other FDS training services should reduce the current demand on appellate resources by resolving more issues at the trial level.

A major FDS function will be responses to telephonic requests for ethical guidance and trial tactics questions. Responses may be within the advisor's personal knowledge. However, FDS will also maintain files of briefs from the Court of Military Appeals and the Court of Military Review. Exemplary trial briefs will also be retained. Research assistance will be given, but the trial defense counsels' work will not be done for them. It is anticipated that some inquiries will require coordination with an appellate attorney with current expertise in a given area, and that questions regarding paralegal skills such as document location or processing will be answered by the FDS paralegal. The FDS will *not* become actively involved in trial litigation, or involve itself in the local jurisdiction's business.

An integral part of the FDS mission will be long range planning. It will continuously refine the defense chain to improve the delivery of defense services. In establishing its areas of primary emphasis, FDS will obtain maximum input from field counsel. Emphasis of this planning role is expected to be minimal during the early stages of FDS development, but will increase with FDS maturation.

The FDS will oversee Army-wide defense

services. Accordingly, it will be staffed by officers who have had extensive trial experience. It will be able to respond quickly to field inquiries; provide the continuing legal education needed for defense counsel; and be able to evaluate the effectiveness of defense counsel.

The FDS will be operational on 1 October 1976. Services as outlined above will be provided as of that date. Direct field consultation, *The Advocate*, and Basic Class instruction are ongoing services. The first two regional seminars will be held in the second quarter of FY 77. Exact dates will be announced in the near future.

As is apparent, direct provision by FDS of the full scope of their services to overseas commands is not feasible. Those functions requiring personal contact, for example, tactical assistance and regional seminars, will be fulfilled in coordination with FDS by the senior defense counsel of major overseas commands.

Major Joe D. Miller has been designated as the Chief, Field Defense Services Office, Defense Appellate Division. His address is Chief, FDS Office, DAD, USALSA, Falls Church, Virginia 22041.

It is the desire of The Judge Advocate General that the entire Corps continually strive to refine the quality of defense services provided to the military accused. The vitality of the defense organization and its effectiveness in meeting the needs of defense counsel and clients are directly related to the manner in which the organization is publicized and supported in the field. The success of this undertaking will reflect upon all of us individually and upon the Corps as a whole. Your suggestions and comments are not only welcome, but necessary to insure that this is both a team effort and a team success.

APPENDIX A

*Letter to all defense counsel,
by BG Coggins, dtd 25 April 1975.*

One of my duties, and an important one, is to act as senior mentor for all JAGC defense counsel, which includes the constant monitoring of the operations of our legal defense

system. I view my function as supportive and, if the need arises, corrective.

Some defense counsel periodically confront the problem of having no one immediately available to consult for advice and assistance. For this reason, I wish to note and highlight the presently informal defense counsel structure existing within the Corps. It includes personnel at your own installation, at higher headquarters, in the Defense Appellate Division, and me. The current issue of *The Advocate* includes a roster of defense counsel throughout the world, and in one sense, identifies our structure.

While The Judge Advocate General supervises and assists all Judge Advocates in regard to professional matters, I am his chief advisor in matters regarding the defense function. Together with the Chief, Defense Appellate Division, I evaluate and initiate appropriate action whether in response to complaints, inquiries and requests for assistance from JAGC defense counsel, or as new initiatives to enhance the defense function.

While my attention is generally devoted to the smooth functioning of the defense system, the Chief, Defense Appellate Division and his appellate counsel stand ready to furnish specific, technical assistance in regard to cases in litigation, including matters of trial tactics and pertinent precedents. A "case of first impression" arising at your installation may well have been researched, briefed, and litigated by the Defense Appellate Division among the thousands of cases it receives annually. While DAD does not serve as a substitute for your initial research, it has available for your assistance voluminous files of updated, practical research. A phone call or letter to them is all that is needed.

At your installation level, solid preparation and courtroom experience are your most valuable assets in the various stages of a case. Senior Defense Counsel within larger JAG offices and at major area command headquarters provide experienced, client-oriented attorneys to whom junior officers can turn for assistance in preparing their clients' defenses. The capabilities and responsibilities of our

Senior Defense Counsel should not be overlooked. Normally, the Senior Defense Counsel should serve as a point of coordination between the defense counsel on one hand, and the Staff Judge Advocate on the other. However, as your senior defense counsel, I encourage you to contact me directly with any problems, comments or suggestions you may have, if other approaches prove unavailing. The use of technical channels is encouraged, but not required. Use your Senior Defense Counsel within your office and at higher headquarters; and those who are the Senior Defense Counsel, monitor, supervise and assist in an active fashion.

APPENDIX B

Letter to all staff judge advocates on training and evaluation of defense counsel, by MG Persons, dtd 23 July 1975

1. There is nothing upon which I place more importance than effective representation of accused before courts-martial. In order to insure that defense counsel are as effective as possible, it is necessary to provide adequate on-the-job training. It is also essential that defense counsel be fairly and objectively rated upon their performance of duty so that good counsel are rewarded and ineffective counsel are rewarded and ineffective counsel are found and removed from their duties before they cause substantial harm to their clients and, consequently, to the military justice system.

2. Insofar as training is concerned, it is my view that a judge advocate officer should not be detailed as a defense counsel until he has served a reasonable apprenticeship, say two or three months of active trial work, as an assistant trial counsel. After a suitable period of assisting a more experienced counsel, there should be another period of time when a counsel should act as a trial counsel. Only after prosecuting for six months or so, and after the Staff Judge Advocate concludes that the judge advocate is sufficiently "ready", should an officer be detailed to defense duties. It is important that the mistakes most young trial law-

yers make in learning should, to the maximum extent possible, not be at the expense of the accused.

3. Another practice I strongly advise is a rotation of duties on a reasonably fixed schedule that is known in advance by all the affected officers. A well-rounded judge advocate should be exposed to all facets of military legal practice. More particularly, in military trial practice, a good judge advocate should be adept, and comfortable, at handling either side of the case. A defense counsel who has been a prosecutor will be a much better defender because of his ability to evaluate the case "from the other side." The converse is equally true. In order to be effective, the rotation policy should be in writing. Perhaps a chart could be posted which would show, well in advance, the dates of the change of duty and the new assignments. I recognize that the rotation of duties entails some degree of personnel turbulence. I am confident, however, that it will be well worth it because it will result in a better trained and better balanced corps of trial attorneys. Moreover, if well-planned, the turbulence can be held to acceptable limits.

4. Another concern is in the rating of defense counsel. It is my desire that, where there is more than one defense counsel in a command, the senior defense counsel act as rater for all other defense counsel. He is in the best position to evaluate fairly their effectiveness. The object is not to insulate defense counsel from fair and objective criticism. To the contrary, it is necessary that incompetent counsel be rated as such and, unless improvement is shown, that they be removed from trial duties.

5. In sum, I wish to emphasize that continual effort is required to upgrade the practical, on-the-job, training of counsel and to identify those whose aptitude or attitude indicates they are unfit for trial advocacy duties. I welcome your comments on this letter and any suggestions that will help in obtaining these objectives. In particular, any suggestions concerning the problem of rating "part-time" defense counsel on their performance of their trial duties would be most helpful.

THE JUDGE ADVOCATE GENERAL'S SCHOOL'S FIRST QUARTER CENTURY—RECOLLECTIONS AND SUGGESTIONS *

*Major General Charles L. Decker***

To come here on the 25th anniversary of our establishment of The Judge Advocate General's School in Charlottesville—to this splendid building—and to see our brothers from the Navy and the Marine Corps—point to the realization that those of us who established the School here had good reason for our dreams. We can hope that the next quarter century will be as productive as the first one.

Because the School is the appropriate place for this particular piece of memorabilia, I return to you the original telegram that gave us the first official notification of the approval of this graduate program by the American Bar Association. Originally it hung in the Commandant's office. Some time later the ink had faded and the telegram was discarded. A friend of mine picked it up and sent it to me. It occupied a place of honor in my office when I was The Judge Advocate General and since has hung in my study. Our friends in the military police crime laboratory can restore the faded print, and the original document is hereby returned to you. It is printed on a Congratulations form used by Western Union. It is dated 23 February 1955, time 1117. It reads:

**COL CHARLES L. DECKER
ARMY JAG SCHOOL
UNIVERSITY OF VIRGINIA
CHARLOTTESVILLE VA**

**THE ABA ACCREDITED YOUR SCHOOL
YESTERDAY.**

**LETTER WILL FOLLOW.
CONGRATULATIONS.**

JOHN G. HERVEY

Mr. Hervey was the advisor to the Section of Legal Education.

The end of the first quarter century and commemoration of the anniversary led me to think a few recollections might be in order. The lantern of the past has always helped to

light the future. Because we are here to honor you gentlemen who are to be graduated, the recollections will be followed with suggestions. The suggestions can be considered, rejected out of hand, or modified as you see fit. You are the educated ones—we demonstrated the need for providing the education which you must use well to prove that we were correct.

As I try to recall the origins of this enterprise, early in the 1950's, General Brannon, The Judge Advocate General, called six or seven of us to his office just before we were made colonels for the second time. Each was in charge of an activity in the office. General Brannon congratulated us on having regained our World War II rank—then he told us that the Army might have to expand somewhat, that the situation was unstable in the far east. He told us to think of the tasks that would need doing in the event of expansion and how we ourselves and the men in our divisions could best accomplish any such work. At that time, I was chief of the Manual Redraft Division. Our mission was to draft a Manual for Courts-Martial, United States, to implement the soon-to-be enacted new Uniform Code of Military Justice.

Throughout World War II and after, the judge advocates in my age group had often discussed how much more effective we would have been had we taken a year prior to becoming division judge advocates to secure a good broad comprehension of the major areas of military practice which went further than the frugal foundation available in a 90-day orientation.

Our experiences in other countries had shown a need for more international law—for an understanding of our brother lawyer—officers in other countries. We had no facilities for planning ahead—everyone was too busy trying to keep up with the caseload. Where was our research and planning? Where could judge advocates meet? What had long been needed was

a place for advanced learning, for legal research and planning, for specialized studies—and a place where judge advocates could meet. A typical example of such a need in miniature was the training of the soon-to-be law officers—a text, a teacher, and a place for short courses on the duties of the law officer.

Returning now to General Brannon and his request for recommendation, I reported to him a week later and recommended that the Manual Redraft Division serve as a nucleus for a judge advocate center for learning, researching, planning and teaching. The center would not be a temporary place for orientation, to be closed after the emergency. It would be permanent. The advanced course would be the *piece de resistance* for intellectual legal gourmets. The planning and research would provide continuing nourishment for the Corps. The center would be called The Judge Advocate General's School. A rose by any other name does not smell as sweet. Had we called it a Military Law Center, it would have sounded too military to our civilian brethren—and many investigations into World War II military justice had certainly given our brother officers in the line a surfeit of what they regarded as unusual and undue use of the word "law." Therefore, the name—which I now think is better than any other we could have chosen.

The key elements were there: research and planning, the advanced course, the short courses—and, of course, basic orientation. A nonresident department could convert our resident academic materials for correspondence courses and courses to be given in Army reserve training schools. The hitch was that we could not start the School until mid-1951 at the earliest. About a week later, General Brannon sent for me and told me that we would go ahead with the School—that all of it except basic orientation could wait until 1951—that he would take care of the orientation of newly commissioned lieutenants at Fort Myer pending finding a site for the School.

There were many pluses to the delay, however.

We had time to wear down the facilities branch in G-4. After looking at all of the mis-

erable empty World War I temporary buildings that were available, we were in a position to ask to put the School at a university site where there was a good law school and a good library.

We thought that ours was a dual profession. We would go to the military service schools on military posts but we would have our military law school in a civilian academic ambience. We had hoped to establish a fellowship with our civilian brethren who taught law. And to have a place to which we could bring practitioners of law, and to talk law. Further, we would not need to duplicate the facilities of a law library.

We wanted to be far enough from Washington so that those who came from the Pentagon to the School would have a reason other than respite. We wanted to be close enough to the Pentagon so that we could transact business without undue delay. More important, however, was the finding of a university community which would welcome us—which was a pleasant place in which to live.

Therefore, we decided in the beginning that we would rule out all Washington, D.C. locations. We decided that we wanted a warm to moderate climate. We wanted the commandant to be an independent agent—and hoped that we could always find teachers who had practiced the military law which they taught. We wanted academic freedom in its truest sense—and I am sure that you have it. We wanted a law school in which there were no skinsheets or demerits—not even for the recruits. Each student was to be a guest. We knew there would be a problem regarding the commissary and military medical services. We would see what could be done to ameliorate such problems—recognizing that no situation can be perfect.

How did we proceed with our law school search? We have some great teachers among our reserve officers. Law teachers were accustomed to working with young men. They were top students of the law. Consequently, among those who had been rapidly promoted to responsible judge advocate positions during World War II were many law teachers who stayed on in the reserves. One of those had spent some active duty time working with me

when we were writing the 1949 Manual. He had an outstanding record as a division judge advocate in combat. So I turned to Dean Ritchie, then Professor Ritchie at the University of Virginia, who thought our ideas sound and our hopes perhaps attainable. He told me that he would talk to the Dean—everyone in those days knew that that meant Dean Ribble.

Incidentally, he told me that Dean Ribble had enlisted in the artillery on his eighteenth birthday in World War I. If he and Dean Ribble thought they could work out an arrangement, they would take it up with the faculty. If the faculty approved, Dean Ribble and Professor Ritchie would take the matter up with President Darden. We knew who President Darden was—former Governor, former member of the Naval Affairs Committee, a Marine pilot in World War I. Nearly all of the law faculty had seen service. Regular Army law students were in the student body and were performing very well.

Colonel Ritchie called me on occasion with questions. One day he called, said that Dean Ribble and he had talked with Mr. Darden and perhaps we could work something out. I proceeded to Charlottesville—Dean Ritchie met me at the station, we met the Dean at Clark Hall. Much of what we were offered was on a joint basis—use of the library, the East Hall, the West Hall, and, for the Advanced Class, a room that would accommodate twenty-seven students; for the Basic Class, a room that would hold up to ninety—but which I recall using for one basic group numbering well over one hundred. There were four offices available for our teachers. The rest of our space consisted of Hancock Hall—the corner dormitory in a recently constructed dormitory area. As I recall, there were four floors in the dormitory. We used the basement floor and part of the floor above it for offices. There we housed the overflow of our Academic Department, the Research and Planning Division, and the Non-resident Schools Division. The remaining rooms were occupied by our bachelor students.

We were granted the same gymnasium privileges as the university students, the Second Army paid for dispensary and hospital serv-

ices of the same variety offered university students. During those first four years, we had no commissary. But I should observe that the priceless ingredient was the quiet and prodigious support of the community.

Dean Ribble was known then and will always be respected as one of our great scholars in constitutional law. However, he had another great talent—in fact, I came to regard the Dean and President Darden as two of the most astute planners and administrators that I have known. The Dean had a plan whereby he could finish the east wing of Clark Hall with our rent money—thereby almost doubling the library space and providing our Academic Department with offices for our teachers. It was good for the Law School and good for us. Before we had been here long, the Dean and Mr. Darden were discussing with us the creation of a building adjacent to Clark Hall for The Judge Advocate General's School. When I left at the end of four years, the excavation had been completed and the concrete poured for the base. Twenty-one years later, the then "new JAG School Building" has reverted to the University and you occupy this splendid edifice.

The preachers of the Gospel have been sustained through the centuries by the Holy Trinity. But in those first four years at the School, I turned to those three sturdy oaks in the forest of the Lord: President Darden, Dean Ribble and Dean Ritchie for support and encouragement just as I did to Generals Brannon and Caffey, the two Judge Advocates General during the period. No recitation of our early days would be true without recognition of those men, the University community and the people of the city here.

Before we conclude these recollections, there are certain observations that might be made, achievements that match the physical manifestations of the building. The Navy has always worked with us here as have the Marines. One of our greatest friends and supporters was General Vandegrift, a Charlottesvillean who would come to the School and give us his views on the relationships of command and military lawyers. Some of our greatest students were Navy and Marine Corps officers.

The armed forces have come a long way since then in the development of their legal services. Today the Navy has a Judge Advocate General's Corps. We each have our separate judiciaries. I recently replayed a 1962 tape recording made after I cut the U.S. Army Judiciary from office control and made it an independent Class II installation. The field judiciary and the U.S. Army Judiciary met with me, and I assured them that there would be no interference with the judiciary from The Judge Advocate General. They were advised that The Judge Advocate General would stand as their first line of defense against any who would bring pressure to bear on them. Technically, the judiciary was under the command of the senior officer, then Colonel Will Freeman. I told them that they were free souls, but that I hoped Colonel Freeman, rather than exercising command, would assume the same powers and duties toward his courts as Chief Justice Warren exercised toward the federal courts as Chief Justice of the Supreme Court of the United States. As you know, it worked out well. Once you prove a change works, legislation is not hard to secure—as long as it doesn't increase the budget! Now all of the services have their judiciaries, and I can say in all honesty that in my opinion the administration of criminal justice in the military is better than that in the federal and state jurisdictions.

And at this point, I pass from recollection to suggestion. And as I pass to suggestion, these suggestions go to the graduating Army men. For the past twelve years I have been completely immersed in the civilian practice except for reading up on events in the Army on occasion, and it would be presumptuous for me to render sweeping suggestions based on my own personal views when I do not have a sufficient familiarity with our sister services to do so. However, to the extent that you think my observations apply generally, they may be worth some thought.

The historians tell us that people have regulated their lives and their relationships for as long as history has been recorded. We humans have proscribed certain kinds of conduct as

unacceptable since we have lived together. For thousands of years men have been writing on the subject. Conditions change and the rules of conduct change. The rules of conduct depend on where one is at a certain time, what the conditions of living are at a certain time, and what the purpose of a particular group may be at a certain time. We know that we humans have kept certain basic characteristics throughout the centuries, but we are continually changing geography, living conditions, purposes and beliefs. In sum, we change everything but ourselves. Law must change to meet changing conditions—and the law in one community may be quite different from that in another—yet each serve sits own reasonably well.

With all the changes made over thousands of years, there is little that hasn't been tried—little that hasn't been said—on the regulation of conduct and on criminal law. The wisest sayings—the paeans of praise—the oburgations against offenders—I doubt that any are original these days. Montaigne, in the sixteen hundreds, tracked down hundreds of witty or cogent epigrams from those who were given current credit to show that in fact others had uttered them centuries before. As far as practice goes, Xenophon appointed an inspector general to hear all grievances before he demobilized his troops a few centuries before Christ. In Deuteronomy, Moses laid down rules for camp sanitation that differ little from those we first learned when we joined the service. So there will be nothing new in these suggestions that I offer to you gentlemen as you go out to take positions of military legal leadership today. They have occurred to me as I look from twelve years of work in civilian law back on more than thirty years of work in military law. So much for the excursus—now back to suggestions.

My first suggestion has to do with the military community and the difference between the civilian and military communities. Perhaps we should note that the sixth amendment provides that in criminal prosecutions the accused shall enjoy a speedy and public trial by an impartial jury in the state and district in which the

crime was committed. In our federal courts, the judges are appointed from the districts and circuits in which they have lived—almost without exception. We know that the colonists did not want to be taken back to England for trial. I need not belabor that aspect. However, the mores were different in different colonies. The views taken of different offenses in Massachusetts were not necessarily the same as in Virginia, extenuation in one community might be aggravation in another. The people of the colonies were making certain that when tried for crime they were tried by people who lived and moved in the same community. And the sixth amendment was not a new guarantee—it was an elaboration and emphasis of what the draftsmen had already put in section 2 of Article III placing the trial of crimes in the states in which they had been committed.

If there were differences between the colonies, think of the differences between the civilian community and the military community. The one is more or less static and fixed in place. The other is mobile and must be ready to move. Nearly all the commandments in civil life are "Thou shalt nots." In the military we have perhaps an even more important body of "Thou shalt." The military is a community that requires an understanding that we must all work together. Moses had to establish a chain of command, and no one has successfully led an army without such a chain of command.

An army must have order and justice. After tinkering with our justice system for some time, we Americans came to the conclusion that the Army must have a Judge Advocate General, and the Congress, by statute, has made him the legal advisor to the Secretary of the Army and to all officers and agencies therein. He is, in effect, the Minister of Justice. Our military judges are set apart and independent, but they are a part of the military community. If the law givers draw too far away from the community—if they became cloistered pharisees—we may find turmoil, misunderstanding—even rebellion and crucifixion.

How can we avoid separating the military community from the administration of mili-

tary justice? A like disaster has happened in the civilian world. The astounding increase in crime in our civilian community has been attributed to the apathy of the population toward our civilian justice system. Our governments, federal and state, are spending millions in an effort to secure support for the police and courts from our civilian communities. We must not make our system a duplicate of the system of civilian justice. I spot-check the appeals and the transcripts of records that go to six state supreme courts. The records fall far short of the quality of the general court-martial records that I saw going up on appeal only thirteen short years ago.

I suggest that our civilian court systems are too cumbersome. The pendulum has swung too far.

For some years, climaxing, I hope, in the sixties, the courts and the lawyers went overboard. About six years ago one of the most highly placed judicial officers in our land made a talk in which he spoke of protection for all and stated that the Supreme Court had even considered the case of a prisoner's claim for seven packages of cigarettes. The word gets around; this year the Chief Justice observed that the burden of the federal courts was too heavy. It appears that there were 14,260 requests for habeas corpus from state prisoners. Quoting the Chief Justice:

... federal judges should not be dealing with prisoner complaints which, although important to a prisoner, are so minor that any well-run institution should be able to resolve them fairly without resort to federal judges.¹

The military is ahead. In 1963, we secured our Article 15 which puts small offenses in the hands of the appropriate commanders. I hope you will not complicate Article 15 procedures—they were intended for petty offenders. Should judges mark the sparrow's fall? Perhaps there is only One who can do that.

What I have been trying to lead up to is that the judge advocate must be a part of the military community. He must share the burdens of good order and discipline with his brother officers, the noncommissioned officers

—and, yes, the recruits. And they must share the burden with the judge advocate.

He must share their lives and be a part of it. It is best if he has been a soldier or a young line officer before he becomes a judge advocate. The present Judge Advocate General and Assistant Judge Advocate General, as well as their predecessors, served as line officers before becoming judge advocates. Men with experience in the line are needed in our Corps.

The Constitution assures the civilian of a trial by those in the community where the offense was committed. They are best situated to understand the cause and to render justice—for the community and for the man. Let us have the same for those in the service. Further, The Judge Advocate General, as the Minister of Justice, must answer for the result. It is up to you to keep the support of the military community.

As more trials go to the bench only, and our line officers do not participate, perhaps we can assign young line officers as assistant counsel so they will be familiar with the process. The commanders course here at the School should prove highly rewarding—we must stay close by letting them know what we can do. There should be a good course in military justice worked into every basic and advanced service school course, and the course should be taught by judge advocates. Judge advocates should teach the prevention of offenses as well as the trial of offenses and the treatment of offenders. An ounce of prevention is worth a pound of cure. That is one price that has not changed with inflation.

Judge advocates should also teach legal assistance in the service schools. The great morale factor of a family provided for is a key to the good life. So much of military life depends on laws enacted for the military only. And so much of the military life is quite different from that of those who follow civilian pursuits. Our medical problems are different

—and as our special medical problems run from trench foot to battle fatigue, so do our legal problems run from problems of initial change of status and proof of citizenship of those born abroad right on through to the survivor's benefit plan.

You must be the family lawyers for the military. Your services should be available to all—from the last recruit to the chairman of the joint chiefs. Do not limit your assistance to the lower grades. Only the military lawyer knows all the problems—and often he is the only lawyer available. As one thumbs through the catalog of course here, he finds estate planning—it is a contribution to the effectiveness and efficiency of the Army. The trust and confidence you win as you help your brothers in arms gives them a feeling of family security that must underlie their battle commitments. In their potential for successful battle commitment lies, of course, our most helpful potential for peace among nations.

We mark a quarter century here today—may you and those who follow mark even better quarter centuries because you are graduated today—better fitted to serve.

Notes

* This article is an adaptation of a speech presented to the graduates of the Twenty-fourth Judge Advocate Officer Advanced Course at The Judge Advocate General's School, U.S. Army, Charlottesville, Virginia, on 28 May 1976.

** U.S. Army (Retired). B.S., 1931, United States Military Academy; J.D., 1942, Georgetown Law Center. Member of the Bars of the State of Kansas, the U.S. Court of Military Appeals and the U.S. Supreme Court. General Decker was the first Commandant of the Judge Advocate General's School at Charlottesville and the Judge Advocate General of the Army from 1 January 1961, to 1 January 1964. He was the Director of the Ford Foundation financed National Defender Project from 1964 to 1971 and is now Chairman of the Board, Studies in Justice, Inc., Washington, D.C.
1. Burger, *The Condition of the Judiciary*, *FED. B. News*, Feb. 1976, at 38.

PROFESSIONAL RESPONSIBILITY

FROM: CRIMINAL LAW DIVISION, OTJAG

The OTJAG Professional Ethics Committee recently considered a case involving a defense counsel's representation of two accused with potentially conflicting interests. The Committee examined the case to determine whether trial defense counsel's conduct was consistent with Disciplinary Rule (DR) 5-105(A)-(C), *Code of Professional Responsibility*, governing multiple-client representation.

The facts of the case were as follows: Due to the heavy case load within the jurisdiction, one defense counsel was assigned to represent two defendants (A and B) on heroin charges. Recognizing a potential difficulty, defense counsel discussed the matter with both clients and "numerous other attorneys" including the Senior Defense Counsel at the major command headquarters. In preliminary proceedings against A, the defense counsel was disqualified and excused as detailed counsel in view of his representation of B. Following presentation of the Government's case during the trial of B, defense counsel sought to call A as a witness on behalf of B. A colloquy ensued in which the military judge asked whether counsel's prior representation of A was in any way inhibiting his conduct of B's defense. Counsel assured

the judge that there was no impediment to his defense of B and the trial proceeded. At this point B expressed dissatisfaction with his detailed counsel and requested a continuance to obtain individual civilian counsel. The military judge inquired into the reasons for B's dissatisfaction and denied the motion. Detailed counsel then stayed in the case through sentence.

The Ethics Committee found that counsel's assessment of the problem and timely discussion with both accused and responsible authority comported fully with DR 5-105(A)-(C). With regard to whether counsel should have informed the military judge of the multiple representation at the outset of B's trial, the Committee was not willing to assume that the judge was ignorant of the situation, having presided only a short time before at the Article 39(a) session at which counsel had been disqualified from representing A. Though the Committee observed that counsel's continued representation of either accused might best have been terminated when the possibility of conflict first arose, it found that counsel's considerable frankness and efforts to resolve the difficulty merited commendation.

ABA Public Contract Law Section

The Public Contract Law Section of the American Bar Association is devoted to the subject of procurement law, with a primary focus on federal contracts. In its most recent National Institute topics covered included the Freedom of Information and Privacy Acts, complex government contract cases, cost accounting standards, and technical data and computer software rights. Recent *Journal* articles have dealt with the enforceability of unwritten contracts with the government, the distinctions between responsiveness and responsibility (written by an AF JAG Captain), contract breaches, and judicial admissions before the ASBCA. Newsletter informa-

tion has covered subjects ranging from proposals for changes to the disputes clause to relief from inflation in construction contracts. For Judge Advocates handling procurement law problems at base, system or BCA level, the exchange of information available through this section offers significant opportunity for maintenance of professional competence, and for input into procurement policy formulation. Membership in this section is open to ABA members at a nominal cost. For further information contact Captain Perlman, AFOSR/JA, Bolling AFB, Washington, DC 20332, AUTOVON 223-0281.

JUDICIARY NOTES

From: U.S. Army Judiciary

RECURRING ERRORS AND IRREGULARITIES

1. August 1976 Corrections by the ACMR of Initial Promulgating Orders:

a. Failure to set forth the proper date in different sections of the order—three cases.

b. Failure to include in the order a charge and its specification, alleging possession of marihuana in violation of Article 92, UCMJ—one case.

2. *Reporting Requirements.* The Office of the Clerk of Court is responsible for completing at the end of each quarter, "The Report of Criminal Activity and Disciplinary Infractions in the Armed Forces." Because several jurisdictions have not been forwarding this report to HQDA (JAAJ-CC), Nassif Build-

ing, Falls Church, VA 22041, within the required time period, it has been necessary for the Clerk of Court to contact the responsible office concerned by message or telephone at the end of each reporting period in an attempt to obtain all the necessary information for completion of the report. Staff Judge Advocates of each command having general court-martial jurisdiction are reminded that this report is due not later than seven working days after the close of the calendar quarter (31 March, 30 June, 30 September, 31 December) or after the GCM jurisdiction ceases to exist. The report will be prepared on DA Form 3169-R, dated 1 October 1975. (See Chapter 10, C16, AR 27-10 dated 4 Nov. 75, for reporting requirements and a copy of the present form to be used.)

Criminal Law Section

From: Criminal Law Division, OTJAG

Investigations Into Unethical Conduct of Judge Advocates. Prior to any command investigation into an alleged ethical violation by a member of the Judge Advocate General's Corps, the supervising staff judge advocate shall obtain approval from The Judge Advocate General. The request for approval will include the name of the respondent, a factual summary of allegations, and anticipated dura-

tion of investigation. An allegation should ordinarily make reference to the pertinent disciplinary rule of the *Code of Professional Responsibility*. Prior approval is not required as to investigations with a view to administrative or disciplinary actions for conduct unconnected with violations of professional ethics.

Additional FLITE Services Available

The following material is digested from the *FLITE Newsletter*, Vol. 9 No. 2, Apr.-June 1976.

1. **Expanded Data Base.** The FLITE System employs computers to store the full text of legal materials and to perform legal research using this information. This service is furnished free to any DoD member performing

official business. FLITE's currently searchable data base is:

CURRENTLY SEARCHABLE FLITE DATA BASES

Armed Services Procurement Regulation
1969 Ed (1975 being accessed)
Board of Contract Appeals Decisions

Vols 56-2 (Jul 1956) thru 74-2 (Dec 1974)
 (Vol 75-1 being accessed)
 Court-Martial Reports
 Court of Military Appeals
 Vols 1 (Dec 1951) thru 48 (Aug 1974)
 Court of Military Review
 Vols 1 (Dec 1951) thru 48 (Jul 1974)
 (Vols 49, 50 and Advance Sheets of 51
 being accessed)
 Decisions of The Comptroller General of The
 United States
 Published, Vols 1 (Jul 1921) thru 53
 (Dec 1974)
 Unpublished, Jun 1955 thru Jun 1975
 Manual for Courts-Martial
 1969 Rev Ed
 International Law Agreements of Special
 Interest to DoD
 Published, Jun 1949 thru Dec 1974
 Unpublished, Jun 1947 thru May 1975
 United States Code
 Titles 1-50 App. 1970 Ed (Supp III, Jan
 1974)
 United States Court of Claims Reports
 Vols 134 (Jan 1956) thru 202 (Oct 1973)
 United States (Supreme Court) Reports
 Vols 189 (Oct 1902) thru 419 (Oct 1974)
 Federal Reporter 2d Series
 Vols 448 (Sep 1971) thru 477 (Apr 1973)
 Federal Supplement
 Vols 330 (Jun 1971) thru 369 (Jan 1974)

The headnotes of the Supreme Court Reporter, the Federal Reporter 2d Series, and the Federal Supplement are available from 1961 thru 1976.

The West key numbers in the headnotes have also been captured and can be used as a search word; however, Users should know that headnotes although valuable are manually prepared abstracts concerning the decisional materials and are subject to the human judgment factor inherent in any manual abstracting or similar indexing technique. Abstracts are not decisional text. The capability of full text search and retrieval is always available to us on the FLITE batch processing system.

2. Special Products Capability. The FLITE

System stores every word in the searchable data base. Over the years FLITE has produced key-word-in-context (KWIC) indices covering the C.M.R. and U.S.C.M.A. cases, published Comp. Gen. decisions, and the Constitution of the United States DoD Directive 5160.64 directs that FLITE will provide computer based legal research and "special products" to all DoD components and other organizations of the Federal Government. Normally, the cost allocable to a special product is borne by the requestor unless it can be shown that its use can be shared by a substantial segment of government activities. The FLITE system also has the capability to search on nonindexed words in context with indexed words; for example, if it is important which preposition has been used relative to the object, it will be possible to specify it as a search word even though it has not been indexed. FLITE's mailing address is FLITE (HQ USAF/JAESL), Denver, CO 80279.

3. Short Recess Search Capability. FLITE is able to assist a DoD attorney locate a key case during a short court recess. FLITE can be contacted by dialing AUTOVON 555-6433. A FLITE attorney will discuss the problem and initiate a search immediately using both a microfiche key-word-in-context index of Volumes 1-47 of the C.M.R. and an on-line remote terminal access to the FLITE system.

4. Further Information. An orientation briefing on the operation and use of the FLITE system is offered at the FLITE facility on the second Tuesday of each month. Reservations should be made no later than the preceding week. Further published materials on FLITE include:

"LITE" Becomes "FLITE," THE ARMY LAWYER, Jan. 1975, at 25.

FLITE Announces Instantaneous Search Capability, THE ARMY LAWYER, Feb. 1975, at 31.

New FLITE Services Available, THE ARMY LAWYER, Mar. 1976, at 14.

FLITE NEWSLETTER, Vol. 9 No. 2, Apr.-June 1976.

JAG School Notes

1. Reserve Training Workshop (Conference). The Judge Advocate General's Reserve Training Workshop (Conference) was held at the School during 8-10 September. Distinguished guests visiting the School for the purpose of attending the JAG Reserve Conference included Major General Wilton B. Persons, Jr., The Judge Advocate General, USA; Major General Henry Mohr, Chief, Army Reserve; Rear Admiral Penrose Albright, Director, Naval Reserve Law Program; Brigadier General Evan L. Hultman, USAR, Commander, 103d Support Brigade; and, Brigadier General Demetri M. Spiro, USAR, Chief Judge, USALSA (MOS DES).

2. 14th Labor Relations Course. From 30 August to 3 September, TJAGSA hosted the 14th Labor Relations Course. Speakers included Dr. Nathan T. Wolkomir, President, National Federation of Federal Employees; Colonel Robert F. Comeau, Chief, Labor and Civilian Personnel Law, OTJAG; Mr. Arthur L. Burnett, Assistant General Counsel, Civil Service Commission, Washington, DC; and, Major William M. Whitten, Labor and Civilian Personnel Law, OTJAG.

3. Ham Young Lecture. Dean Emerson G. Spies of the University of Virginia School of Law delivered the Fifth Annual Edward H. Young Lecture on 26 August. Dean Spies joined the University of Virginia faculty in 1946 and was appointed Dean of the University Law School on 8 July 1976.

The Commandant introduced the Ham Young Lecture with films from Dean Spies' 1943 class at the Officer Candidate School of The Judge Advocate General's Department. After graduating first in his class, Dean Spies was assigned to the School's faculty and later served in the International Law Department at OTJAG.

4. Core Course on Communication Begins. Mr. C. Edward Good, Director of Legal Research and Writing, University of Virginia School of Law, addressed the 25th Advanced Class on 7 September on efficient legal research tech-

niques. Mr. Good's thesis is that efficient retrieval, accurate recording and effective presentation of legal information should be a fully integrated process.

The presentation was part of the new Core Course on Communication. The Core Course on Communication is required of all Advanced Class students. The Thesis is now a part of the Advanced Class Elective Program.

5. Right To Justice Lecture. Julius Debro, Professor of Criminology, University of Maryland, spoke at TJAGSA on 9 September 1976. Professor Debro's topic was "Equal Right to Justice."

6. Procurement Course Filled. The November Procurement Course at TJAGSA is filled. Interested officers should make plans now to attend the courses offered on 7-18 February 1977 and 11-27 April 1977.

7. 2d Contract Cost Course. The Second Allowability of Contract Cost Course, scheduled for 13-17 December 1976, will feature as guest speaker Mr. Raphael Mur, Secretary and General Counsel, Grumman Aerospace Corporation. Mr. Mur will present an industry view of recent developments in the cost accounting standards area.

8. 3d Fiscal Law Course. The 3d Fiscal Law Course, scheduled from 30 November to 3 December 1976 will feature three guest speakers, in addition to the normal coverage of all aspects of funding federal government operations. On 30 November 1976, Mr. John W. Cooley, Deputy Director of Finance and Accounting, Office of the Comptroller of the Army will discuss DoD Fund Management Systems. Colonel Richard P. Dettman, Chief, Appropriation Accounting Division, Office of the Comptroller of the Army, will review some sample RS 3679 violations on 1 December 1976. Then, on 2 December 1976, Mr. John A. Wallace, Deputy for Management Information and Financial Systems, Office of the Assistant Secretary of the Army (FM), will

discuss the financial operations of industrial and stock funds.

9. 68th Procurement Attorney's Course. The two-week 68th Procurement Attorneys' Course will commence at The Judge Advocate General's School on 8 November 1976. The block

of instruction will cover the planning, solicitation, award, performance and disputes resolution phases of federal procurement. The course is primarily for the benefit of those government attorneys with less than six months' procurement experience.

TJAG Congratulates COL Fulton for CLE Efforts

The following letter is from The Judge Advocate General.

DEPARTMENT OF THE ARMY
OFFICE OF
THE JUDGE ADVOCATE GENERAL
WASHINGTON, D.C. 20310

26 July 1976

DAJA-ZX

SUBJECT: Letter of Appreciation

THRU: Brigadier General Hugh J. Clausen,
USA
Chief Judge, US Army Judiciary
Nassif Building
Falls Church, Virginia 22041

TO: Colonel William S. Fulton, Jr.
Military Judge
US Army Court of Military Review
US Army Judiciary
Nassif Building
Falls Church, Virginia 22041

1. I wish to take this opportunity to convey both my personal appreciation and that of the entire Judge Advocate General's Corps for your outstanding contributions to the pro-

grams of our many professional organizations within the civilian and military bars.

2. Your unselfish efforts on behalf of the Corps in the dynamic area of continuing legal education will be long remembered and have assured respect for the professional responsibility of military lawyers everywhere. Your tireless participation in the activities of organized bar groups has likewise reflected a dedication to the legal profession that extended well beyond your duties as Commandant of The Judge Advocate General's School.

3. The Corps is indeed fortunate that your new position on the Court of Military Review will not signal the end of your involvement in the important area of continuing legal education. I wish you continued good fortune in your new duties with the Court.

4. A copy of this correspondence will be placed in your Official Military Personnel File.

WILTON B. PERSONS, JR.
Major General, USA
The Judge Advocate General

CLE News

1. ABA House Endorses Out-of-State CLE. According to the March 1976 issue of the ABA News, the American Bar Association House has approved a call from the Special Committee on Lawyers in Government for states to permit nonresident members of their bars to complete acceptable out-of-state continuing

legal education courses in fulfillment of CLE requirements. The Iowa Supreme Court Commission on Continuing Legal Education has already accredited TJAGSA as a CLE activity sponsor.

2. TJAGSA Courses (Active Duty Personnel).
October 12-15: JAG Conference.

October 18-December 17: 82d Judge Advocate Officer Basic Course (5-27-C20).

October 26-29: 1st Defense Trial Advocacy Course (5F-F34).

November 1-5: 29th Senior Officer Legal Orientation Course (5F-F1).

November 8-19: 68th Procurement Attorneys' Course (5F-F10).

November 8-12: 1st Law of War Instructor Course (5F-F42).

November 30-December 3: 3d Fiscal Law Course (5F-F12).

December 6-9: 3d Military Administrative Law Developments Course (5F-F25).

December 13-17: 2d Allowability of Contract Costs Course (5F-F13).

January 3-7: 5th Military Lawyer's Assistant Course (Criminal Law) (512-71D20/50).*

January 3-7: 6th Military Lawyer's Assistant Course (Legal Assistance) (512-71D20/50).*

January 3-14: 7th Procurement Attorneys' Advanced Course (5F-F11).

January 10-13: 4th Legal Assistance Course (5F-F23).

January 17-20: 5th Environmental Law Course (5F-F27).

January 17-20: 1st Claims Course (5F-F26).

January 24-28: 31st Senior Officer Legal Orientation Course (5F-F1).

January 31-April 1: 83d Judge Advocate Officer Basic Course (5-27-C20).

February 7-18: 69th Procurement Attorneys' Course (5F-F10).

February 28-March 4: 2d Law of War Instructor Course (5F-F42).

March 7-10: 4th Fiscal Law Course (5F-F12).

March 14-18: 2d Civil Rights Course (5F-F24).

March 21-25: 3d Allowability of Contract Costs Course (5F-F13).

April 4-8: 15th Federal Labor Relations Course (5F-F22).

April 4-8: 3d Law of War Instructor Course (5F-F42).

April 6-8: JAG National Guard Training Workshop.*

April 11-15: 32d Senior Officer Legal Orientation Course (5F-F1).

April 11-22: 70th Procurement Attorneys' Course (5F-F10).

April 18-20: 1st Government Information Practices (5F-F28).

April 18-21: 2d Defense Trial Advocacy Course (5F-F34).

May 2-4: 1st Negotiations (tentative title) (5F-F14).

May 2-6: 7th Staff Judge Advocate Orientation Course (by invitation only) (5F-F52).

May 9-13: 4th Management for Military Lawyers Course (F5-F51).

May 9-20: 2d Military Justice I Course (5F-F30).

May 16-20: 3d Criminal Trial Advocacy Course (5F-F32).

May 16-27: 1st International Law II Course (SECRET clearance required) (5F-F40).

May 31-June 3: 6th Environmental Law Course (5F-F27).

June 6-10: Military Law Instructors Seminar.*

June 6-10: 4th Law of War Instructors Course (5F-F42).

June 6-17: NCO Advanced Phase II (71D50).

June 13-17: 33d Senior Officer Legal Orientation Course (5F-F1).

June 20-July 1: USA Reserve School BOAC and CGSC (Criminal Law, Phase II Resident/Nonresident Instruction) (5-27-C23).

July 11-22: 12th Civil Law Course (5F-F21).

July 11-29: 16th Military Judge Course (5F-F33).

July 23-August 5: 71st Procurement Attorneys' Course (5F-F10).

August 1-5: 34th Senior Officer Legal Orientation Course (5F-F1).

August 8-12: 7th Law Office Management Course (7A-713A).

August 8-October 7: 84th Judge Advocate Officer Basic Course (5-27-C20).

August 22-May 1978: 26th Judge Advocate Officer Advanced (5-27-C22).

August 28-September 2: 16th Federal Labor Relations Course (5F-F22).

September 12-16: 35th Senior Officer Legal Orientation Course (5F-F1).

September 19-30: 72d Procurement Attorneys' Course (5F-F10).

* Tentative

3. Civilian Sponsored CLE Courses.

NOVEMBER

1-2: Federal Publications, Defective Pricing, Washington, DC. Cost: \$325.

1-3: Federal Publications, Government Architect-Engineer Contracting, Miami, FL. Cost: \$400.

1-3: Federal Publications, Competing for Contracts, Washington, DC. Cost: \$400.

1-3: Federal Publications, Small Purchasing, Washington, DC. Cost: \$400.

1-5: LEI, Administrative Law Judges and the Regulatory Process Seminar, Ocean City, MD. Contact: Legal Education Institute, ATTN: Training Operations, BT, US Civil Service Commission, 1900 E St. NW, Wash-

ington, DC 20415. Phone: 202-254-3483. Cost: \$450.

3-5: University of Santa Clara School of Law—Federal Publications, Negotiated Procurement, Aladdin Hotel, Las Vegas, NV. Approved: For 15.75 hours of credit by the Minnesota and Iowa CLE authorities and by the California State Board of Accountancy. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202-337-8200. Cost: \$400.

5-7: ABA, 7th National Conference on Law Office Economics Management, Crown Center Hotel, Kansas City, MO.

7-10: NCDA, Management in the Prosecutor's Office, Jacksonville, FL. Contact: Registrar, National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004.

7-12: American Judges Association, Annual Meeting, Las Vegas, NV.

7-12: National College of the State Judiciary, Civil Law Proceedings [State Civil Litigation, Privacy, Class Actions, Student & Faculty Rights, Adhesion Contracts, UCC, Malpractice, Comparative Negligence & Conflicts of Law], Univ. of Nevada, Reno campus, Reno, NV. Contact: Dean, National College of the State Judiciary, Judicial College Bldg., Univ. of Nevada, Reno, NV 89507. Phone: 702-784-6747. Cost: \$345.

10-12: National Security Industrial Association—Federal Publications, Practical Negotiation of Government Contracts, Americana Hotel, Los Angeles, CA. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202-337-8200. Cost: \$400.

10-13: National Association for Court Administration, 8th Annual Conference [National Standards For Court Administration], Philadelphia, PA. Contact: NACA Secretariat, 1600 Lincoln St., Denver, CO 80203.

11-12: FBA-BNA-NYSBA, 3d Annual Labor Law Institute, The Plaza, New York, NY. Contact: BNA.

11-12: ABA National Institute, Current Legal Aspects of Doing Business in the Middle East, Mayflower Hotel, Washington, DC.

11-13: ABA National Institute, The Federal Rules of Evidence and RESPA, Stanford Court, San Francisco, CA.

14-17: Institute for Court Management, Computerized Information Systems Project Management, Dallas, TX.

14-19: National College of the State Judiciary, Sentencing [includes the ABA Minimum Standards on Sentencing], Univ. of Nevada, Reno campus, Reno, NV. Contact: Dean, National College of the State Judiciary, Judicial College Bldg., Univ. of Nevada, Reno NV 89507. Phone: 702-784-6747. Cost: \$345.

15-16: Federal Publications, Cuneo on Government Contracts, Boston, MA. Cost: \$325.

17-18: LEI, Application of the APA to Regulatory Proceedings Seminar, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, US Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202-254-3482. Cost: \$200.

17-19: University of San Francisco School of Law—Federal Publications, Changes in Government Contracts, Sheraton National, Arlington, VA. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202-337-8200. Cost: \$400.

17-19: University of Baltimore School of Business—Federal Publications, Small Purchasing [Small Purchase Procurement], Sheraton National, Arlington, VA. Contact: Seminar Division, Federal Publications, Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202-337-8200. Cost: \$400.

17-19: Federal Publications, Competing for Contracts, Los Angeles, CA. Cost: \$400.

18: Virginia State Bar, Virginia Separation and Divorce, Roanoke, VA. Contact: Director, CLE Committee, Univ. of Va. School of Law, Charlottesville, VA 22901.

18-19: FBA, Administrative Law Conference, Mayflower Hotel, Washington, DC.

19: Virginia State Bar, Virginia Separation and Divorce, Tyson's Corner, VA. Contact: Director, CLE Committee, Univ. of Va. School of Law, Charlottesville, VA 22901.

22-23: LEI, Preparation of Litigation Reports Seminar, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, US Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202-254-3483. Cost: \$200.

22-23: Federal Publications, Cuneo on Government Contracts, Santa Barbara, CA. Cost: \$325.

22-23: Federal Publications, Defective Pricing, San Francisco, CA. Cost: \$325.

28-3 Dec.: American Judges Association, 1976 National Convention, Alladin Hotel, Las Vegas, NV.

29-10 Dec.: LEI, Procurement Law Course, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, US Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202-254-3483. Cost: \$400.

DECEMBER

1-3: Federal Publications, Contracting for Services, Washington, D.C. Cost: \$400.

2: Virginia State Bar, Virginia Separation and Divorce, Richmond, VA. Contact: Director, CLE Committee, Univ. of Va. School of Law, Charlottesville VA 22901.

3: Virginia State Bar, Virginia Separation and Divorce, Norfolk, VA. Contact: Director, CLE Committee, Univ. of Va. School of Law, Charlottesville, VA 22901.

5-10: National College of the State Judiciary, Court Administration [Designed for small to medium multi-judge courts], Univ. of Nevada, Reno campus, Reno, NV. Contact: Dean, National College of the State Judiciary, Judicial College Bldg. Univ. of Nevada, Reno, NV 89507. Phone: 702-784-6747. Cost: \$345.

5-17: National College of the State Judiciary, The Judge and the Trial, Univ. of Nevada, Reno campus, Reno, NV. Contact: Dean, National College of the State Judiciary, Judicial College Bldg., Univ. of Nevada, Reno, NV 89507. Phone: 702-784-6747. Cost: \$525.

6-8: Federal Publications, Government Contract Costs, San Francisco, CA. Cost: \$400.

11-18: Court Practice Institute, Morrill's Trial Residency Training, O'Hare Inn, Chicago, IL. Contact: Court Practice Institute, 127 N. Dearborn St., Chicago, IL 60602. Phone: 312-263-0202.

13-15: Federal Publications, Government Contract Costs, Williamsburg, VA. Cost: \$400.

13-17: Federal Publications, The Masters Institute in Government Contracting, Williamsburg, VA. Cost: \$600.

14-16: LEI, Environmental Law Seminar, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, US Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202-254-3483. Cost: \$250.

16-17: Federal Publications, Cost Estimating for Government Contracts, San Diego, CA. Cost: \$325.

JANUARY

4-6: LEI, Paralegal Workshop, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, US Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202-254-3483. Cost: \$200.

9-14: NCDA, Prosecutor Office Administrators Course, Univ. of Houston, Houston, TX. Contact: National College of District Attorneys, College of Law, Univ. of Houston, TX 77004. Phone: 713-749-1571.

11-13: LEI, Seminar For Attorney-Managers, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, US Civil Service Commission 1900 E St. NW, Washington, DC 20415. Phone: 202-254-3483. Cost: \$250.

24-28: LEI, Trial Techniques in Administrative Proceedings Seminar, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations BT, US Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202-254-3483. Cost: \$400.

30-4 Feb: NCDA, Prosecutors Investigators School, Detroit, MI. Contact: National College of District Attorneys, College of Law, Univ. of Houston, Houston TX 77004. Phone: 713-749-1571.

LEGAL ASSISTANCE ITEMS

*By: Captain F. John Wagner, Jr. and Captain Steven F. Lancaster,
Administrative and Civil Law Division, TJAGSA*

1. ITEMS OF INTEREST.

Automobiles - Impoundments. The United States District Court, Eastern Louisiana found that a New Orleans ordinance which authorized assessment of towing and storage fees against impounded vehicles without prior notice or opportunity for hearing denied the vehicle owners due process of law. The court discussed the case in the light of *Fuentes v.*

Shevin, 407 U.S. 67 (1972), and held that this particular ordinance collided head-on with the principles set down in that case. According to the Louisiana Court, *Fuentes v. Shevin* set down three prerequisites to summary seizure: (1) seizure must be necessary to secure an important governmental or general public interest; (2) there must be a special need for very prompt action; and, (3) the person initiating the seizure must be a government official re-

sponsible for determining, under the standards of a narrowly drawn statute, that it is necessary and justified in the particular instance. The court found no fault with the part of the ordinance which allowed a vehicle that appeared to be illegally parked to be towed to the city auto pound without affording the vehicle owner prior notice and the opportunity for a hearing. In this situation, the three requirements of *Fuentes* seemed to be satisfied. However, at the second phase of enforcement, the collection of storage and towing fees, the constitutional defect appears. The interest at stake is the collection of the towing and storage fees from those who are guilty of traffic violations. Therefore, the "necessity" requirement of *Fuentes* is not met. Nor is the second *Fuentes* requirement, the need for very prompt action, satisfied. Once the vehicle has been removed from the public street, the collection of towing and storage fees can easily await adjudication. As to the third *Fuentes* requirement, the court found that once the vehicle arrived at the auto pound, the fees were collected from every owner without exception; therefore there was no careful supervision by a government official. Although a court could point to no precedent squarely on point for its decision, it stated that the general requirements of due process mandated a finding of unconstitutionality in the New Orleans case. *Remm v. Landrieu*, 45 U.S.L.W. 2123 (Aug. 10, 1976).

DECEDENTS ESTATES AND SURVIVORS BENEFITS—WILLS.

As reported in the JAG REPORTER, Vol. 1976, No. 2, at 16, the Uniform Probate Code of Colorado uses the term "Personal Representative" to describe the fiduciary of a decedent's estate. "Personal Representative" is used whether fiduciary is named in a will or appointed by a court. The Probate Code also deletes from the law the commonly used terms for fiduciary such as "Executor," "Executrix," and "Administrator." When drafting wills for Colorado domiciliaries legal assistance officers should use the term "Personal Representative" when referring to the fiduciary of the decedent's estate. [Ref: Ch 14 DA PAM 27-12]

FAMILY LAW—DOMESTIC RELATIONS—CHILD SUPPORT.

In *Strecker v. Wilkinson* the Kansas Supreme Court faced the issue of judicial cancellation of child support by the district court without notice and opportunity to be heard. In that case, the appellee wrote a letter to the district court stating that his former wife had denied his visitation rights and had fled to California with his minor daughter. In the letter he asked that the court terminate his child support obligations. The court wrote a letter to the appellant runaway mother and advised her that an order terminating child support had been entered effective as of that date. No notice of the order was provided the appellant. Seven years later the appellant filed a motion in the district court for citation in contempt against appellee for his failure to pay child support pursuant to an earlier order of the court. The apposite statute imposed no requirement of notice and opportunity for a hearing as a prerequisite to modification of orders for support, custody or education of children in divorce cases. However, the court looked to 27B C.J.S. Divorce § 322(3)b (1959) and determined that the general rule was that due process required, once a proper motion was filed, that the adverse party receive reasonable notice thereof and an opportunity to be heard. The court concluded that the district court's letter and order determining payment of child support were void and of no effect. Appellee raised the defense of laches, arguing that acquiescence of the runaway mother for over six years and his failure to provide the required child support payments barred her from seeking enforcement for the order. The court cited *Peters v. Webber*, 175 Kansas 838, 267 P. 2d 481 which involved the same situation, and noted that since the child was still a minor and the enforcement of the past due payments would accrue directly to the benefit of the child, that the husband's obligation was not barred by laches. Essentially, the court held that the rights of a minor child are not to be waived

by inaction and passive acquiescence on the part of the mother. 2 FAMILY L. REP. 2695. [Ref. Ch 20, DA PAM 27-12]

FAMILY LAW—DOMESTIC RELATIONS— GROUNDS FOR DIVORCE.

The Texas Court of Civil Appeals First Supreme Judicial District held that a trial court erred in not admitting evidence of adultery, but that the error was harmless since the evidence would have had no impact on the original suit brought on no-fault grounds. The court held that adultery was a viable and separate ground which may effect any property settlement to be considered before the court, even though the adultery allegedly took place after the separation and after the filing of suit. The court accepted the view that no-fault divorce was primarily designed to create a new and independent classification so as to render unnecessary the sordid and unhappy trials that otherwise occur; but the court also recognized that adultery was an older and just as legitimate a ground for divorce and one that was not limited to events taking place before separation. No harm was done in the instant case, however, because the innocent spouse (the husband) could not show that the division of the property would have been done differently had he been allowed to introduce evidence of the adultery. *Bell v. Bell*, 2 FAMILY L. REP. 2672 (1976). [Ref: Ch. 20, DA PAM 27-12]

Family Law—Domestic Relations—Separate Agreement—Interpretation and Enforcement. According to the Pennsylvania Superior Court the same legal principles apply to both anti-nuptial and post-nuptial agreements, and that in order to overturn either type of agreement the person seeking to overturn the agreement bears the burden of proving the invalidity of the agreement by clear and convincing evidence. The court further stated that such a burden can be met by proving either (1) a reasonable provision for the claiming spouse was not made at the time of the agreement or

(2) in the absence of such a provision, a full and fair disclosure of the other's worth was not made. The reasonableness of the provision must be determined as of the date of the agreement. In *McGannon v. McGannon*, the appellant wife argued that, because the separation agreement did not give her anything more than she would have received in a property settlement by virtue of having been married to the appellee, the agreement did not "adequately provide" for her. The court looked at what she actually received (one-quarter of a million dollars) and held that the requirement of "reasonable provision" is not determined by whether the appellant received more or less by the separation agreement than she would have received in a property settlement or otherwise. Appellant, though a housewife, lacking familiarity with the world of business and finance, had the advice of counsel throughout the formulation and negotiation of the agreement in question. The court found that her entrance into the agreement was informed and intelligent. The court further found that the appellee had disclosed his financial worth fully and fairly to the appellant. 2 FAMILY L. REP. 2622 (June 28, 1976) [Ref: Ch. 20, DA PAM 27-12]

Family Law—Domestic Relations—Support of Dependents: In *Woodruff v. Woodruff*, the Nassau County New York Supreme Court faced the issue of whether a separation agreement voluntarily entered into could constrain the court to incorporate the terms of that agreement in a final judgment of divorce and thus make available for the enforcement of a contractual obligation voluntarily assumed the drastic remedies provided by law for the enforcement of a marital obligation created by law. The separation agreement entered into in January of 1974 pursuant to which parties had lived separate ever since, required defendant to pay plaintiff \$2800 per year for her support plus fringe benefits and \$2600 per year for each of the two children. The court cited *Goldman v. Goldman*, 282 N.Y. 296 as posing the issue then before them in the following terms: "Husband and wife may by contract

agree upon the amount which the husband may pay in satisfaction of his marital obligation for support of his wife and children, and the court will not 'interfere' with such a contract. It may be enforced like other contracts and, so long as the contract remains unimpeached, the court will not compel the husband to pay to the wife for her support a sum greater than the wife agreed to accept, at least where such sum is not plainly insufficient. . . . The court did not, however, decide there, or in any other case, that the parties by voluntary contract could not only fix the amount which the husband shall pay but could also constrain the court to incorporate the terms of the voluntary agreement in a final judgment of divorce and thus make available for the enforcement of a contractual obligation voluntarily assumed the drastic remedies provided by law for the enforcement of a marital obligation created by law . . ." In *Woodruff v. Woodruff* the court held that the power of the court to direct a husband to make suitable provisions for the support of his wife is complimented by the power to annul, modify or vary the directions thereafter and that a party invoking the power of the court to give such direction can not be heard to say that the direction so given is not subject to modification thereafter. The court concluded that the agreement can not and does not limit the power of the court conferred by statute; that the direction of the court that the defendant shall pay to the plaintiff a sum less than he agreed to pay does not relieve the defendant from any contractual obligation. 2 FAMILY L. REP. 2621 (June 23, 1976). [Ref. Ch 20, DA PAM 27-12]

FAMILY LAW—INTERSPOUSAL IMMUNITY.

Massachusetts has rejected the common-law doctrine of interspousal immunity in a case where the wife sued the husband for injuries in an automobile accident. The doctrine had existed until the middle of the 19th century based on the notion that the husband and wife were essentially a single entity which could not sue itself. Two newer arguments arose to keep the doctrine alive. The first argument

was based on the fear that a suit between family members would lead to disruption of the peace and harmony of the home. The other argument centered around the dangers of fraud and collusion with the family reaping a windfall at the expense of the insurance company. Relying on the experiences of other state courts (most notably California, Indiana, New Jersey, Virginia, and Washington) as well as Massachusetts decisions ending parental immunity, the court in this case rejected the newer rationales. The defendant argued that the statutory language in the Married Women's Act (G.L.c. 209, §6), to the effect that while a married woman may sue and be sued the statute did "not authorize suits between husband and wife". But the court again sought the interpretations of other state courts and found that such language did not incorporate interspousal immunity but only codified the common law. The court felt free to judicially alter the doctrine as circumstances required and held that such a change was necessary now because public policy favored recovery for all accidents. However, the holding was limited to motor vehicle accidents because of the danger of collusion between spouses in other tort areas. *Lewis v. Lewis*, 2 FAMILY L. REP. 2672 (1976).

Family Law—Support of Dependents—Judicial Enforcement of Support Obligations. The Minnesota Supreme Court, after a lengthy discussion of the doctrine of reciprocity, declined to accept that doctrine insofar as it related to recognition of judgments by foreign courts, and held instead that reciprocity is not a prerequisite to enforcement of a foreign judgment in Minnesota. The case involved a mother who had obtained a default judgment of paternity and child support against a United States serviceman in Germany in 1967. The opinion stated that it was not the business of the courts, whose province is the decision of individual cases, to impose rules designed to coerce other nations into giving effect to its own judgment. Reciprocity, according to the court, has no basis in the policies and rules that underlie the just and fair disposition of the case involving

a foreign judgement and should therefore have no place in Minnesota law. The court also pointed out that both the Restatement, Conflict of Laws, Second, U § 98, comment *e*, and the Uniform Foreign Money-Judgments Recognition Act, 9B U.L.A. 64, do not require reciprocity. In this case the putative father urged that the German court lacked jurisdiction, that the court did not give him reasonable notice and an opportunity to be heard, and that the judgment, being one of default, should preclude enforcement. The court acknowledged that anyone of these reasons may be enough to deny enforcement of the German judgment. The court remanded the case to the trial court and tasked it with making further inquiry into the circumstances underlying the German judgement and if it was satisfied that the judgment was entitled to enforcement, it should grant enforcement to the extent of the accrued arrearages in support. *Nicol v Tanner*, 2 FAMILY L. REP. 2724 (Minn. Sup. Ct., Aug. 20, 1976). [Ref: Ch 26, DA Pam 27-12]

Property — Real Property — Closing. Under Regulation X of the Real Estate Settlement Procedures Act, a lender on a first mortgage for a dwelling house must, at the time of the written application for a loan or within three business days thereof, provide the prospective borrower with a copy of the booklet "Settlement Costs" and provide a good faith estimate of the amount of closing costs involved in the financing arrangement. Further, the borrower may inspect the Uniform Settlement Statement form which contains all of the settlement information one business day before settlement; and the Statement must be given to the borrower at the settlement proceedings. [Ref: Ch 34, DA PAM 27-12]

SOCIAL SECURITY—AMOUNTS OF SOCIAL SECURITY BENEFITS.

The Senate has issued a concurrent resolution (S. Con. Res. 131) which states that it is "the sense of the Congress that no individual whose social security benefits are increased (whether as the result of an automatic cost-of-living adjustment or by the enactment of a

law) should suffer, by reason of such increase, a loss of or reduction of any benefits which he or she (or the family or household of which he or she is a member) is otherwise entitled to receive under any federal or federally-assisted program." [Ref: Ch 39, DA PAM 27-12]

TAXATION—FEDERAL INCOME TAX.

The United States Tax Court has ruled (*Bagur v. Commissioner*, 7/29/76) that a separated, but married, Louisiana wife is liable for taxes on one-half of her husband's income for the period of separation because under Louisiana Law a husband's earned income is deemed to be community property. The court ruled that the wife's contention that she had no knowledge of her husband's income at the time was without merit. Legal assistance officers should be aware of the decision and consider it when advising on separation agreements and divorce settlements, when the parties are domiciled in a community property state. [2 FAMILY L. REP. 2675 (17 August 1976)]. [Ref: Ch 41, DA PAM 27-12]

Veterans Benefits. The Texas Attorney General recently opined that, regardless of the percentage of the disability as rated by the Veterans Administration, any service-connected disability which is established by official records will entitle a veteran otherwise to qualify for a veterans employment preference under Article 4413(31), V.T.C.S. to an additional five point credit on an earned rating on a competitive merit system or Civil Service plan exam. [Ref. Ch 44, DA PAM 27-12]

2. ARTICLES AND PUBLICATIONS OF INTEREST.

COMMERCIAL AFFAIRS—CIVILIAN INDEBTEDNESS.

Morrison, *Is the Military Brig a Debtors' Prison?*, 25 DEPAUL L. REV. 652 (1976); Pearson, *Due Process and the Debtor: The Impact of Mitchell v. W. T. Grant* (Pt I) 28 OKLA. L. REV. 743 (1975), (Pt II) 29 OKLA.

L. REV. 277 (1976). [Ref: Ch 9, DA PAM 27-12]

COMMERCIAL AFFAIRS — COMMERCIAL PRACTICES AND CONTROLS—TRUTH IN LENDING.

Landers and Chandler, *The Truth In Lending Act and Variable-Rate Mortgages and Balloon Notes*, 1976 A B. F. RES. J. 35; Landers, *The Scope of Coverage of The Truth in Lending Act*, 1976 A.B.F. RES. J. 565. [Ref: Ch 10, DA PAM 27-12]

DECEDENT'S ESTATES AND SURVIVOR'S BENEFITS — ESTATE PLANNING — COMMUNITY PROPERTY.

Johanson, *Migrating Client: Estate Planning for the Couple From a Community Property State*, 9 INST. ESTATE PLAN. 8.1 (1975). [Ref: Ch 13, DA PAM 27-12]

DECEDENT'S ESTATES AND SURVIVOR'S BENEFITS—ESTATE PLANNING—TRUSTS.

Wicker, *Charitable Trusts*, 11 GONZAGA L. REV. 1 (1975). [Ref: Ch 13, DA PAM 27-12]

DECEDENT'S ESTATES AND SURVIVOR'S BENEFITS — ESTATE PLANNING — POST MORTEM ESTATE PLANNING.

Moore, *Conflicting Interests in Postmortem Planning*, 9 INST. ESTATE PLAN. 19.1 (1975). [Ref: Ch 13, DA PAM 27-12]

FAMILY LAW—ADOPTION

Note, *Religious Matching Statutes and Adoption*, 51 N.Y.U. L. REV. 262 (1976). [Ref: Ch 21, DA PAM 27-12]

FAMILY LAW — ILLEGITIMATE CHILDREN—SUPPORT OF DEPENDENTS.

Shaw and Kass, *Illegitimacy, Child Support and Paternity Testing*. 13 HOU. L. REV. 41 (1975). [Ref: Ch 23, 26, DA PAM 27-12]

TAXATION—STATE AND LOCAL INCOME TAX—COLLECTION:

Lenar, *Out-of-State Collection of State and Local Taxes*, 29 VAND. L. REV. 443 (March 1976). [Ref: Ch 43, DA PAM 27-12]

**Reserve Affairs Section
From: Reserve Affairs, TJAGSA**

1. JUDGE ADVOCATE GENERAL'S RESERVE TRAINING WORKSHOP. Over 100 Reserve Component Judge Advocate officers representing JAGSO Headquarters Detachments, Army Reserve Commands, Training Divisions, Garrisons, Civil Affairs Units and Support Commands gathered at The Judge Advocate General's School from 9 to 11 September 1976 to attend the Judge Advocate General's Reserve Training Workshop (Conference). Command Judge Advocates of the Active Army from FORSCOM, TRADOC and the CONUS Armies joined the Reserve Judge Advocates in discussing the implementation of the Pre-mobilization Legal Counseling Program and the reorganization of JAGSO Detachments. Following registration activities and a reception for conferees on Wednesday the 9th, Conference business began the following morning with a welcoming address by TJAGSA Commandant, Colonel Barney L. Brannen, Jr.

Brigadier General Evan L. Hultman chaired the opening day events and after his remarks Lieutenant Colonel Ron Holdaway, Chief, Personnel, Plans and Training Office, spoke on recent developments in active Army personnel policies. Next, insight into recent developments in Reserve Component personnel management was provided by Colonel George McDonald, Director, Reserve Management and Training RCPAC. The morning program concluded with a Total Force analysis by Major William Simpson, from DAMOC-FC.

The afternoon session was highlighted by lengthy discussions dealing with the recently developed Pre-mobilization Legal Counseling Program (see following article) and closed

with a Report on the National Guard by Colonel Bernard Chupka, Ohio Army National Guard, and CONUS Army workshops headed by the CONUS Army Staff Judge Advocates. The traditional conference banquet was held that evening at Charlottesville's Boar's Head Inn.

Major General Henry Mohr, Chief, Army Reserve, was the featured speaker at the conference banquet. In his address to the attendees, General Mohr discussed the importance of maintaining a well trained reserve force, recent improvements in Reserve programs, and expressed his appreciation to the JAG Reserve Components and TJAGSA for their work in developing the Pre-mobilization Legal Counseling Program.

Brigadier General Demetri M. (Jim) Spiro (MOB DES, Chief Judge, USALSA), opened and chaired the Friday sessions of the conference and his remarks were followed by an address by The Judge Advocate General, Major General Wilton B. Persons, Jr. Reorganization of JAGSO Detachments was then reported on by Lieutenant Colonel James N. McCune, Assistant Commandant for Reserve Affairs, TJAGSA, who outlined the new JAGSO Table of Organization and Equipment, while Colonel Charles A. Brant, Staff Judge Advocate, 83d U.S. Army Reserve Command, discussed the revision of AR 27-4. This soon to be implemented reorganization will consolidate numerous JAGSO Detachments and effect a more efficient allocation of Reserve Component Judge Advocate officers.

The morning's activities closed with an informative address on the U.S. Naval Reserve Program delivered by Rear Admiral Penrose Albright, Director, Naval Reserve Law Program.

The afternoon session consisted of workshops for Headquarters Detachment Commanders, ARCOM SJA's, and Army Readiness Region Coordinators. The remaining conferees attended seminars dealing with recent developments in Criminal Law, Procurement, Administrative and Civil Law, and International Law given by TJAGSA faculty.

A no host buffet held in TJAGSA Consolidated Club rounded out the activities later in the evening.

On Saturday, 11 September, Lieutenant Colonel McCune and Colonel Jason Aisner, Commander, 3rd JAG Detachment concluded the three day agenda with a discussion of how court reporter training would be integrated into the reorganization.

2. PRE-MOBILIZATION LEGAL COUNSELING. At the request of the Chief, Army Reserve and pursuant to the tasking by The Judge Advocate General, TJAGSA has developed a Pre-mobilization Legal Counseling Program for use by Reserve Component personnel. This program, which is designed to reduce post-mobilization legal problems for members of the Reserve Components, will be implemented in the near future.

Under the Total Force structure, the Reserve Component forces have been assigned missions which may require rapid, and for some units, immediate deployment. Since these time phase deployment schedules place added emphasis on the readiness of the members of Reserve Components, a program which would reduce the post-mobilization legal problems, was deemed necessary by the Chief, Army Reserve, and The Judge Advocate General. This program will be conducted during the eight-hour IDT phases of Reserve Component training. As it has been developed by the Assistant Commandant for Reserve Affairs, the program will entail a three-hour group counseling session on topics set forth in the Text of Instruction, and, at the end of the three hour session, Judge Advocate officers will provide individual counseling to those Reserve Component members who have a particular legal problem. The program is designed to be educational and to counsel the Reserve Components on the myriad of problems that they will face upon mobilization, to include potential legal problems. Individual members of the Reserve Components will, during the individual counseling sessions, have an opportunity to have a *simple* Will prepared

and to discuss other legal documents and problems.

In August 1976, the Assistant Commandant for Reserve Affairs sent a letter to all Judge Advocate officers in the Individual Ready Reserve. This letter included a form which requested information from each IRR as to whether or not they would be willing to participate in this program. Approximately 225 officers of the IRR have indicated that they would be willing to participate in this program for retirement/retention points only. (Due to extreme funding limitations, this program is not authorized additional manday spaces for those legal officers who participate.) Participation in the program, however, does offer a unique opportunity for individual ready reservists to obtain retirement/retention points.

The responsibility for coordinating and administering the Pre-mobilization Legal Counseling Program has been delegated to the Staff Judge Advocates of each ARCOM or separate GOCOM. For Army National Guard personnel, the State Adjutant General acting through the state Staff Judge Advocate will be responsible for providing counseling to those members of the Guard of the respective states. Coordination between the state Staff Judge Advocates and the local ARCOM and GOCOM Staff Judge Advocates has been encouraged. The implementation of this program will be from Department of the Army to Headquarters, United States Army Forces Command who will issue the implementing instructions and orders.

This program offers a challenge to Reserve Component Judge Advocate officers to play a vital role in assuring mobilization readiness for all members of the Reserve Components. Each member of the Judge Advocate General's Corps/United States Army Reserve is encouraged to participate within his available time limitations in insuring that this program is an unqualified success. Participation of Reserve Component personnel, either the IRR personnel or those Judge Advocates currently in troop program units, will to a large degree

serve the Army, the Reserve Component program and the nation.

3. ASSISTANT JUDGE ADVOCATE GENERAL FOR SPECIAL ASSIGNMENTS (MOB DES) ASSUMES NEW POSITION. Effective 7 August 1976, Brigadier General Evan L. Hultman, JAGC, USAR, formerly Assistant Judge Advocate General for Special Assignments (MOB DES) assumed command of the 103d Support Brigade in Des Moines, Iowa.

General Hultman's military career dates back to 1943 when he enlisted in the Army as a private in the Infantry. He was commissioned a second lieutenant in January 1945 upon his graduation (1st in his class) from Officer Candidate School and thereafter served as a company commander overseas in the 19th Infantry Regiment of the 24th Division. He was discharged in 1946 with the rank of captain. His reserve assignments include battalion commander of the 2d Battalion of the 410th Infantry, 103d Division, the Assistant Staff Judge Advocate and the Staff Judge Advocate of the 103d Infantry Division, and his most recent assignment as commanding officer of the 450th Strategic Military Intelligence Detachment. General Hultman's military education, in addition to Infantry OCS, consists of completion of Mountain Warfare School (1948), the Associate Company Infantry Officers Course (1959), the JAG Career Course (1965), the Command and General Staff Course (1969) where he graduated on the Dean's List, and the Industrial College of the Armed Forces (1973).

General Hultman has occupied a wide range of challenging positions during his civilian legal career. Highlights include his service as County Attorney for Black Hawk County, Iowa for two terms, Attorney General for the State of Iowa for two terms, from 1960 to 1964, and his current appointment as United States Attorney for the Northern District of Iowa.

General Hultman received a B.A. degree (summa cum laude) in 1949 and a Juris Doctor degree (cum laude) in 1952 from the

University of Iowa. In addition to his legal activities General Hultman has been active in a wide range of community activities which encompassed chairmanships of various health funds, continuing participation in the Boy Scouts of America and membership in the Junior Chamber of Commerce. He served as the Legal Counsel for the National Junior Chamber of Commerce from 1958 through 1960.

General Hultman's duties as Assistant

Judge Advocate General for Special Assignments (MOB DES) encompassed the responsibility for supervising and directing research concerning the mobilization readiness of the Reserve Component of the Judge Advocate General's Corps, development of a Pre-Mobilization Legal Counseling Program and acting as one of the principal advisors to The Judge Advocate General on policies and procedures concerning the Reserve Components of the JAG Corps.

THOUGHTS ON A FRIDAY AFTERNOON

By: Major Archibald M. S. McColl, SJA, Fort Benjamin Harrison, Indiana

Imagine, if you will, that you are the SJA of an excellent CONUS post, camp or station, and that it is a beautiful late Friday afternoon in the early spring. Imagine further that, since it is Friday and has been quiet all day long, you have in a moment of Understanding, Comraderie and Appreciation (and Idiocy) let most of your people leave. The telephone rings. Then imagine:

The first call informs you that the civilian KPs at the mess hall have gone on a wildcat strike and set up picket lines.

Then the Post Commander has been served with a Temporary Restraining Order, closing down the Post heating plant because it pollutes the atmosphere. A hard frost is expected tonight.

Then another call:

An Allied Officer has attempted to assault a maid in the BOQ, and is being kept from further violence only by a large MP sitting on him. Other Allied Officers from the same country, with whom our relations are at the moment strained, are unhappy about the restraint, and Command wants to lock the Allied Officer in the D Cell.

Then you find out that a soldier whose sentence was remitted so he could be discharged under Chapter 13, AR 635-200 for other of-

fenses, has refused to waive the board as both he and his counsel had promised.

The phone rings again.

The Commander has directed that 43 trainees, who have washed out of various courses and as casualties have been causing problems, be discharged by Monday.

The Court Reporter, who is excellent, comes in and reports that the recording equipment for the last GCM malfunctioned, and almost all of the defense case is lost. So are the Military Judge's instructions. The accused was sentenced to DD and 20 years for a particularly savage robbery. There was a lot of publicity for the trial.

The phone rings again:

It is the Post G-2. A routine background investigation has revealed that one of the Defense Counsel, whose last five clients are now enjoying their Constitutional Right to be Rehabilitated at Fort Leavenworth or elsewhere as competent authority may direct, is a phony; he never graduated from law school or took a bar exam or was certified. His records are forgeries. Actually, he is an escapee from a mental hospital in Texas.

Then you get an info copy, delayed of course, of an Article 138 complaint another

Defense Counsel filed against the Commander of the Post for referring a case to trial.

G-2 calls back. Your new Trial Counsel, whose first case is Monday, is a card carrying member of the SDS (Right now there is a VW Microbus painted lavender and filled with bearded and otherwise shaggy persons, at a gate to the post. They are to testify at the trial Monday as character witnesses and want to camp out somewhere on post—anywhere—until then. They are accompanied by a reporter for *Power to the People* Magazine and a representative of Andy Stapp's Serviceman's Union).

The phone rings again:

A Sp/4 who is supposed to drive a military truck to an on-post function of a private association has refused to do so unless his family is admitted free to the function. The Colonel in charge of the function wants him put in pre-trial confinement and charged with disobedience and disrespect. It is alleged that the Sp/4 told the Colonel to perform an impossible act during their discussion of his order.

You turn on the radio to get the news:

A helicopter from the Post has crashed downtown in the nearby large city. Nobody was killed, but there is a lot of damage. The Disaster Claims SOP was something you were going to get to next week.

You turn off the radio.

A retired Brigadier General, who is very influential in the retired community drops in. He wants a will, including a trust, and he wants it before he leaves on a trip to visit the President. He wants you to do it, and he will be back for it before midnight.

A commotion outside distracts you. You open your window and look out. One of the soldiers whom you have seen several times going into Defense Counsel's office earlier is sitting straddled on the roof of the post headquarters, yelling he won't come down until his Defense Counsel gets there and if anyone

comes up to get him, he will jump. The Defense Counsel in question is on a three day pass, and has as far as you know, gone camping.

The phone rings:

One of your married Captains, who is an expert lecturer on military ethics and the Need for Morality, has been caught in uniform in a raid on a massage parlor. It appears that there was TV coverage of the raid.

A deputy sheriff comes in, with a warrant and requests for extradition for your chief clerk, who has also been released early. He lives on post.

The phone rings.

Three Legal Assistance Officers are needed to go to a camp about one hundred miles away, to spend the weekend writing wills for reservists during their weekend drill. This project has Command interest. Portions of the Camp have been released to the State for the National Guard; portions are still under Army control, and there are also motor cycle races scheduled for that weekend. While no permission has been obtained for these races, the promoter is the nephew of the congressman of the district. As you find out, large and unruly crowds are expected. The maps of that Camp, showing which parts of the Camp are under whose jurisdiction are available only at the District Engineer's office which is in a different time zone and, alas, is closed for the weekend.

The MP who was directing traffic to help solve a traffic jam off post, which traffic jam was caused by blocking an on-post road due to construction, has allegedly used his fists on a driver who ignored his instructions.

A young man comes in. He has a slight accent and an interesting story. He is a German citizen. He came to the States, enlisted in the Army, deserted, returned to Germany, enlisted in the German Army, was sent to the States for training, deserted and now wants

to turn himself in and also to find out who will process his case.

The phone rings again.

You look at it sadly, get up and with it still ringing, leave your shop and go forth into the night.

And much later, you get a call at home. Your offices were not secured. They are now

crawling with MPs and you have to come in to inventory what is supposed to be there.

Of course, some of the above incidents will never happen to SJA's, Deputy SJA's, Acting SJA's or reasonable equivalent thereof of the caliber of the readers of *The Army Lawyer*, and the rest of the incidents are obviously easily solved by them. Still, are they not Thoughts For A Friday Afternoon?

JAGC Personnel Section

From: PP&TO, OTJAG

1. Orders Requested as Indicated:

<i>Name</i>	<i>From</i>	<i>To</i>
	CAPTAINS	
George C. Baxley	Bayonne, NJ	Okinawa
John R. Hamilton	Fort McPherson, GA	Kwajelein Missile Range
Edward D. Holmes	Fort Bliss, TX	Korea
Glen D. Lause	Fort Riley, KS	USALSA, Falls Church, VA
Robert V. Mesenga	Korea	Presidio of San Francisco
Timothy E. Merritt	Fort Knox, KY	Korea
Michael D. Sermersheim	Okinawa	Fort Ben Harrison, IN
Alan E. Sommerfeld	Okinawa	Fort Carson, CO

2. Fort Leavenworth Phase, Command and General Staff Officer Course. Experience has shown that there is an annual rush by active Army officers to complete the CGSO course prior to the convening of the LTC AUS and MAJ RA selection boards, which normally occur in the April-May time period. Officers who expect to be in the zones of consideration for the 1977 boards, and who are eligible to attend the Fort Leavenworth phase of the CGSO course, are encouraged to apply as soon as possible for quotas to attend the resident phase of instruction. Classes through December 1976 have already been filled. Class dates for calendar year 1977 are expected to be released on or about 1 October. Officers who desire to submit their applications prior to the release of the 1977 schedule, may do so indicating the month they desire to attend, in

place of the class number. Officers who expect to become eligible for the Fort Leavenworth phase prior to the convening of the 1977 LTC AUS and MAJ RA selection boards are reminded that subcourse 85, Military Writing, requires approximately 80 days for evaluation by CGSC-NRI before the certificate of completion for the nonresident phase can be issued. Class quotas cannot be reserved until a student has received his certificate of eligibility. Officers should plan accordingly.

Officers who became eligible to attend the final phase prior to 1 October 1975 must complete the course of instruction prior to 1 April 1977. Officers who have become eligible subsequent to 1 October 1975 must complete the program within 18 (18) months of their becoming eligible.

Current Materials of Interest

Articles

Hill, *The National Labor Relations Act and the Emergence of Civil Rights Law: A New Priority in Federal Labor Policy*, 11 HARV. CIV. RIGHTS-CIV. LIB. L. REV. 299 (1976).

Comment, *Federal Civilian Court Intervention in Pending Courts-Martial and the Proper Scope of Military Jurisdiction Over Criminal Defendants: Schlesinger v. Councilman and McLucas v. DeChamplain*, 11 HARV. CIV. RIGHTS-CIV. LIB. L. REV. 432 (1976).

Brothers, *The Judge Advocate and the Action-Forcing Provisions of the National Environmental Policy Act*, AIR FORCE L. REV., Summer 1976, at 1. By Major Charles A. Brothers, USAF.

Franck, *Federal Wage Regulations and Service Contracts*, AIR FORCE L. REV., Summer 1976, at 17. By Captain Derrick R. Franck, USAF.

Murchison, *Entrapment in Military Law*,

AIR FORCE L. REV., Summer 1976, at 57. By Captain Kenneth M. Murchison, USAF.

Silliman, *The Supreme Court and its Impact on the Court of Military Appeals*, AIR FORCE L. REV., Summer 1976, at 81. By Captain Scott L. Silliman, USAF.

Dickson, *Government Contracts: Recent Developments in Depreciation and Rental Cost*, AIR FORCE L. REV., Summer 1976, at 94. By Captain B. Alan Dickson, USAF.

Darugh, *Motor Vehicle Claims*, AIR FORCE L. REV., Summer 1976, at 103. By Captain David G. Darugh, USAF.

Book Reviews

Reish, *The Law of War: A Documentary History*. Edited by Leon Friedman, AIR FORCE L. REV., Summer 1976, at 108. By Captain Andrew F. Reish, USAF.

Hilliard, *Criminal Law Outline*. By William A. Grimes, AIR FORCE L. REV., Summer 1976, at 110. By Major John E. Hilliard, USAF.

Errata

Several errors occurred in the August 1976 issue of *The Army Lawyer*. On page four of Norman Cooper's article "The Military Judge: More Than A Mere Referee," the second sentence in note 22 should begin "Note that the military judge's" On page 32, line 11,

the subsection title should be "2. SJA Office Furnishings." On page 28, the "JAGC Personnel Section" should have included Allan D. Adams, Jr. and Hugh E. Henson in the list of lieutenant colonels.

By Order of the Secretary of the Army:

BERNARD W. ROGERS
General, United States Army
Chief of Staff

Official:

PAUL T. SMITH
Major General, United States Army
The Adjutant General





